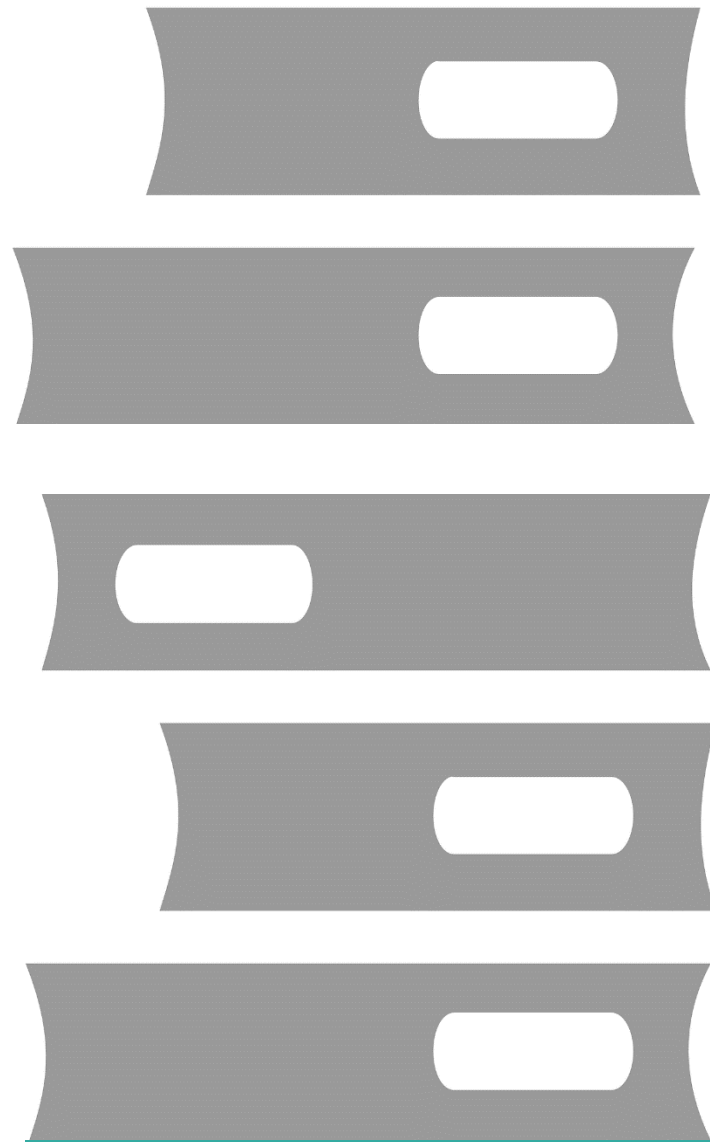

Consultation outcome

Costs Lawyer Code of Conduct



16 October 2023

Costs Lawyer Standards Board



Overview

The Costs Lawyer Standards Board (CLSB) regulates Costs Lawyers under the framework established by the Legal Services Act 2007. To ensure that Costs Lawyers meet appropriate professional standards, the CLSB establishes requirements in relation to competency and conduct. Those requirements are set out in various regulatory arrangements, collated in the [Costs Lawyer Handbook](#).

The Costs Lawyer Code of Conduct is an important central element of these regulatory arrangements. It establishes the core principles of professional conduct to which Costs Lawyer must adhere, fostering public confidence in individual practitioners and the profession as a whole. The current version of the Code of Conduct is available [on our website](#).

From 2019 to 2023, the CLSB carried out a systematic review of all its regulatory arrangements. The Code of Conduct is the final document to be considered under that programme of work, having been subject to review earlier this year. The review focused, in particular, on ensuring that the Code of Conduct aligns with:

- the CLSB's other updated regulatory arrangements;
- the findings of a recent [CLSB research project](#) funded by the Regulators' Pioneer Fund (the RPF project) looking at the role of Costs Lawyers in the sector;
- research into the competencies expected of a qualified Costs Lawyer;
- expectations of the CLSB's oversight regulator, the Legal Services Board (LSB), and promotion of the [regulatory objectives](#) in the Legal Services Act 2007;
- the Better Regulation Principles, and in particular ensuring that the Code does not impose unnecessarily broad regulatory burdens; and
- evidence of good practice from across the professional services sectors.

We issued a [consultation on proposed changes to the Costs Lawyer Code of Conduct](#) on 19 May 2023. We received responses from the Legal Services Consumer Panel ('LSCP'), the Association of Costs Lawyers ('ACL') and five individual Costs Lawyers.

In light of the consultation responses, we intend to implement the revised Code of Conduct as proposed, subject to the amendments described in this consultation outcome report. Implementation is subject to prior approval of the Legal Services Board.

A table showing the amendments proposed in the consultation paper, the feedback received and changes made as a result of the feedback is at Annex A.

We would like to thank everyone who responded to the consultation. Your time and effort in responding is greatly appreciated, and your feedback has informed the changes set out in this outcome report.

Responses to consultation questions

Objectives

Consultation question 1: Do you agree that we have focused on the right objectives in revising the Code of Conduct? Are there any other key objectives or bodies of evidence that we should take into account? If so, how?

The ACL, LSCP and two Costs Lawyers responded to this question. All of these respondents agreed that we have focused on the right objectives in revising the Code of Conduct.

The ACL welcomed the inclusion within the Code of a requirement that Costs Lawyers adopt a proactive approach to the administration of justice, and the clarity regarding the potential clients from whom Costs Lawyers may receive instructions.

The LSCP appreciated that the CLSB's consumer outcomes framework had been considered in revising the Code. It also appreciated our aim to align the Code of Conduct with the codes of other regulators to improve consistency and clarify consumer expectations.

The LSCP expressed some concerns about the delineation of professional client and ultimate client, and the relationship between regulation and innovation. The LSCP also

noted that it would like to see consideration of the diversity of consumers echoed throughout the Code.

One Costs Lawyer suggested that the revised Code should include a requirement for information provided to clients and prospective clients to be in a form that they are able to understand, based on the nature of the individual or business.

Respondents did not identify any other key objectives or bodies of evidence that the CLSB should take into account.

CLSB response

We are pleased that respondents felt we had focused on the right objectives in revising the Code of Conduct.

We agree with the suggestion that the revised Code should include a requirement that information be provided to clients and prospective clients in a form that they are able to understand, based on the nature of the individual or business. This has been included in the revised Code as new principle 3.7.

The LSCP's concerns about the delineation of professional client and ultimate client, the relationship between regulation and innovation, and consideration of the diversity of consumers, are addressed later in this response.

The proposed amendments

Consultation question 2: Do you agree with the proposed amendments to the Code of Conduct? Are there any additional amendments that we should consider?

Four Costs Lawyers, the ACL and LSCP responded to this question.

General feedback

The LSCP was pleased to see that the Code included the promotion of: effective complaints procedures; proactive action on recurring themes in complaints; the use of TPMA's to make acting for individual consumers more attractive; continuing competency; and reporting misconduct among Costs Lawyers to the CLSB or other

relevant regulators. The LSCP felt that these obligations supported the building of a positive culture for consumers.

The LSCP considered that the statement in the introduction directing Costs Lawyers to contact the CLSB if they are unsure of how any proposed innovation interacts with regulatory arrangements may be discouraging, particularly when read alongside the reference to disciplinary proceedings in the paragraph immediately afterwards.

The LSCP also considered that the distinction between the ultimate client and the professional client should be made clear, and that the Code should recognise that the interests of these two clients – as well as their understanding of the legal system – may differ. The LSCP also felt the Code should clarify that where the interests of the professional and ultimate client differ, the interests of the ultimate client should take precedence.

The LSCP suggested that the Code should include an obligation to have some understanding of the ultimate client in order to serve their interests rather than just assuming what their interests are.

One Costs Lawyer suggested the Code should make clear that the principles would be overridden by anything that needs to be done to comply with the law.

Feedback on specific aspects of the Code

One Costs Lawyer queried why “professionalism” had been removed from Principle 1.

The LSCP and one Costs Lawyer felt that the wording of Principle 1.1 was unclear and potentially confusing. The LSCP felt that it would be helpful for principle 1.1a to say that upholding the administration of justice also applies when advising clients.

The LSCP felt that principle 1.4 is helpful for encouraging greater transparency of information for consumers, but that this principle should also include a positive obligation to provide helpful or meaningful information to consumers. One Costs Lawyer suggested that the word “undertaking” in principle 1.4 should be changed to “carrying out”.

Two Costs Lawyers queried the use of the word “good” in Principle 2. One noted that “good” is subjective and potentially confusing.

The LSCP suggested that principle 2.5 be expanded to refer to the resources of the court and the parties, to make it clear that cost-effective use of resources benefits consumers as well as the court.

One Costs Lawyer suggested that the word “each” in principle 3 should be changed to “your”.

The LSCP suggested that it would be helpful for principles 4.4 and 4.5 to refer to the ultimate client, and for principles 6.2 and 6.3 to expressly state that non-inclusive behaviour can affect consumers as well as employees. One Costs Lawyer suggested that the word “any” should be added before “other parties” in principle 4.6.

The LSCP found the update to principle 6 helpful, but suggested that the Code should refer specifically to treating clients fairly and equitably, to recognise that a one size fits all approach is not appropriate (for example, vulnerable clients may need extra levels of care) and that an equitable approach enables all clients to achieve the same level of service and satisfaction.

CLSB response

We note the LSCP’s suggestion of including an obligation to have an understanding of the ultimate client in order to serve their interests. We agree with this in principle, however we are concerned that the concept of having “an understanding” is likely to be subjective and what would constitute a sufficient understanding would vary according to each client and the circumstances of the case or matter at hand. For these reasons, we will reflect this in guidance to support the Code, rather than in the Code itself.

We understand the rationale behind the LSCP’s suggestion of placing a positive obligation on Costs Lawyers to provide helpful and meaningful information, in the interests of consumers. However, a positive obligation of this nature is difficult to enforce, particularly as what is considered “helpful” or “meaningful” is likely to be subjective and dependent on the individual client. We feel this comment is best addressed by including guidance on information provision in our new framework for Costs Lawyers who provide services directly to consumers (B2C services). That

framework is currently under development for the purposes of complying with the Legal Services Board’s policy statement on empowering consumers, and is due to be implemented by the end of 2023.

It was suggested that the Code should make clear that the principles would be overridden by anything that needs to be done to comply with the law. We consider that principles 3.1 and 7.1 make it sufficiently clear that the principles can be overridden where this is necessary to comply with the law or the proper administration of justice, and have therefore not made any further changes.

Response to feedback on specific aspects of the Code

We take on board the LSCP’s feedback about the introductory section potentially sounding discouraging in relation to innovation, and have amended the introduction accordingly. It will now say: “If you are unclear about how an innovation you are considering might interact with this Code or other CLSB regulatory arrangements you should **discuss this with** the CLSB”.

In the consultation paper, we explained that we have amended principle 1 to include independence in place of professionalism. Independence is a core value that is not currently mentioned in the Code and which emerged from the RPF project findings as an attribute that clients particularly value. There was not sufficient evidence to suggest that professionalism should be added back into principle 1, however, the importance of professionalism is reflected in principle 4; in particular, in principles 4.3 and 4.4.

In response to the feedback on principle 1.1, we have replaced the word “this” with “your behaviour” for clarity. We have also amended principle 1.1a to make it clear that upholding the proper administration of justice applies when advising clients, as well as to a Costs Lawyer’s work before the court and in conducting litigation.

There was insufficient evidence for changing the word “undertaking” in principle 1.4 to “carrying out”. Principle 1.4 will therefore continue to refer to “undertaking”.

Following respondents’ comments, we have amended the word “good” in principle 2 to “proper” for clarity. This change also aligns the revised Code with that of other legal regulators, which refer to the “proper administration of justice”, thus giving greater consistency across the sector.

We agree that cost-effective use of resources is important for consumers and parties, as well as the courts, and that it is important to reflect this in the Code. We have therefore amended principle 2.5 to add “and parties” in line with the LSCP’s feedback.

We have made three amendments to principle 3 based on respondents’ comments.

Regarding principle 3, the LSCP is correct that the interests of the ultimate client should take precedence. We have reviewed the Code based on the LSCP’s feedback and added a new paragraph 3.1b to make it clear that, in the event of a conflict of interest between the professional and ultimate client, the interests of the latter should take precedence.

One respondent suggested that Principle 3 should refer to “your” client rather than “each”. We have not incorporated this suggestion into the revised Code because some Costs Lawyers may have both professional and ultimate clients, and it is important for principle 3 to refer to “each” client to reflect this.

In response to the LSCP’s suggestion that principles 4.4 and 4.5 should refer to the ultimate client, we have amended both of these principles so that they refer to “each client”. We consider that referring to “each” client in both of these principles makes clear that the obligations apply to both professional and ultimate clients. We also agree that adding the word “any” before “other parties” would be helpful in principle 4.6 and have made this change accordingly.

We agree with the LSCP’s reasoning regarding principle 6. We have therefore updated principle 6 and related references in the Code to include the words “and equitably”.

Accessibility

Consultation question 3: Do you find the proposed presentation of the Code of Conduct accessible? Are there any other formatting changes we should consider to make the Code of Conduct more user-friendly?

Two Costs Lawyers, the ACL and the LSCP responded to this question. All of these respondents found the proposed new presentation of the Code of Conduct accessible.

Two of the respondents suggested other formatting changes that the CLSB should consider to make the Code of Conduct more user-friendly. One Costs Lawyer said that a tabular format makes information more easily understood. The LSCP said that additional

headings in the introductory text may make the Code more user-friendly, and that definitions of an ultimate client and a professional client would be useful.

CLSB response

We are pleased that respondents found the proposed new presentation of the Code of Conduct accessible.

We have added a definition of “ultimate client” and “professional client” to the definitions table of the revised Code for clarity, in response to the LSCP’s feedback.

We have considered the inclusion of additional headings in the introductory text, as suggested by the LSCP. As the introductory text is relatively short and already has subheadings for “Definitions”, “Authorised rights” and “Seven principles of regulation”, we do not think that further subheadings are necessary, but will bear this feedback in mind for future revisions of the Code.

We note the point about the tabular format and will explore providing a tabular version of the Code as well as the standard version for ease of access.

Equality

Consultation question 4: Do you foresee any reason why the proposed changes could have a harmful impact on persons with a protected characteristic under the Equality Act 2010? If so, is there any evidence you can provide that would help us assess that impact?

Two Costs Lawyers, the ACL and the LSCP responded to this question. None of these respondents foresaw any reason why the proposed changes could have a harmful impact on persons with a protected characteristic under the Equality Act 2010.

The LSCP noted that, while the number of individual clients served by Costs Lawyers is currently low, the Code should make it clear that the ultimate client’s interests must trump the professional client as the Legal Services Act envisioned, to avoid the interests of vulnerable clients being undermined.

The LSCP also noted that its Tracker Survey consistently shows that minority ethnic consumers have lower levels of satisfaction with the service and outcome achieved

through their use of legal services, and that it is important to consider how non-inclusive behaviour could affect the diverse range of clients served by Costs Lawyers, not just other professionals they work with.

CLSB response

We are pleased that respondents did not foresee any reason why the proposed changes could have a harmful impact on persons with a protected characteristic under the Equality Act 2010.

We agree that the Code should make it clear that the interests of the ultimate client must take precedence. As stated above, we have added new paragraph 3.1b to reflect this.

We are grateful to the LSCP for the data it has provided regarding the higher levels of dissatisfaction among legal services consumers from minority ethnic backgrounds. We are committed to creating a working and regulatory culture that recognises and values diversity, actively promotes equality of opportunity and that does not tolerate unlawful discrimination, victimisation or harassment. Principle 6 of the Costs Lawyer Code of Conduct requires Costs Lawyers to treat everyone with dignity and respect. This includes clients, colleagues and third parties. As a regulator, we will continue to seek to ensure that no individual or group is discriminated against because of a particular characteristic, and continue to encourage Costs Lawyers to commit to promoting equity, diversity and inclusion within their organisations and the profession, to enable more equitable outcomes for all consumers.

Next steps

We will proceed with the introduction of the revised Code as drafted, subject to the amendments set out in this response.

We will now apply to the Legal Services Board for approval of the revised Code of Conduct. Subject to the outcome of that application, we intend to implement the new Code in early 2024. We will notify Costs Lawyers of the implementation of the revised Code directly by email.

Annex A – Explanation for proposed amendments to the Code of Conduct

Section of Code – Revised Text originally consulted on in May 2023	Further revisions in response to consultation feedback	Explanation of revisions following consultation	Explanation of Proposed Amendments – original consultation
<p>Definitions</p> <p>Introduction</p> <p>This Code is made pursuant to the LSA and sets out the principles that should guide your conduct to be followed by you as a Costs Lawyer, both when delivering reserved activities and across the rest of your practice, as well as, to the extent indicated below, in your private conduct. Further, it sets out your authorised rights and works in conjunction with prevailing legislation in such a way as to regulate what you can and cannot do under your authorisation.</p> <p>The scope of your authorisation is governed by legislation but should not be interpreted as preventing you from expanding into other, unreserved areas of practice or from seeking to</p>	<p>Definitions of “client”, “professional client” and “ultimate client” have been added as follows:</p> <p>Client: The person for whom a Costs Lawyer acts including (where the context permits) a prospective client, former client, professional client or ultimate client.</p> <p>Professional client: Any person or organisation authorised to carry out reserved legal activities under the LSA, or any unauthorised costs advisor, that instructs a Costs Lawyer to provide services to or in relation to an ultimate client.</p> <p>Ultimate client: The person or organisation for whom a professional client is acting.</p> <p>The scope of your authorisation is governed by legislation but should not be interpreted as preventing you from expanding</p>	<p>These new explanations have been added for clarity in response to feedback from the LSCP.</p> <p>The text highlighted in blue has been added to reflect the LSCP’s feedback that</p>	<p><i>This expanded introduction is designed to remind practitioners that their practise areas (and thus regulatory obligations) are not limited to reserved activities and to encourage innovation.</i></p>

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<p>innovate in areas related to costs and pricing where Costs Lawyers have unique knowledge and skills. If you are unclear about how an innovation you are considering might interact with this Code or other CLSB regulatory arrangements you should contact the CLSB.</p> <p>Under section 176(1) of the LSA you must comply with this Code. Breach of this Code or of the CLSB’s wider regulatory arrangements as set out in the Costs Lawyer Handbook may result in disciplinary proceedings being brought against you by CLSB. This Code is effective on the date stated on the first page and replaces the previous Code of Conduct effective 31 October 2011.</p>	<p>into other, unreserved areas of practice or from seeking to innovate in areas related to costs and pricing where Costs Lawyers have unique knowledge and skills. If you are unclear about how an innovation you are considering might interact with this Code or other CLSB regulatory arrangements you should discuss this with the CLSB.</p>	<p>the words “contact the CLSB” are potentially discouraging.</p>	<p><i>This is a minor change proposed for clarity, to remind Costs Lawyers of their wider obligations.</i></p>
<p>Authorised Rights</p> <p>As a Costs Lawyer you are a regulated person under the LSA and are authorised to carry on the following reserved legal activities:</p> <ul style="list-style-type: none"> • The exercise of a right of audience 			<p><i>The proposed addition at the end of this section of the Code is designed to clarify that Costs Lawyers’ practice need not be limited to their authorised rights.</i></p>

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<ul style="list-style-type: none"> • The conduct of litigation • The administration of oaths <p>Provided that you are instructed to deal only with matters that relate to costs, you may conduct proceedings and represent clients in any court or tribunal, including any criminal court or courts martial, the Supreme Court or the Privy Council where:</p> <ul style="list-style-type: none"> • the proceedings are at first instance; • the proceedings include an appeal below the level of the Court of Appeal or Upper Tribunal, are on a first appeal (other than in the Court of Appeal) and the appeal itself relates to costs; • the proceedings do not fall within either of the categories above, but your instructions are limited to dealing with the costs of the proceedings; or • the court or tribunal grants permission for you to 			

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<p>conduct proceedings or to represent a client (or both).</p> <p>Where proceedings relate to other matters, in addition to costs, the rights referred to above apply only to those parts of the proceedings (if any) that:</p> <ul style="list-style-type: none"> • relate solely to costs; or • when they relate to other issues, solely those issues that are not in dispute. <p>A matter “relates to costs” if it relates to payments for legal representation, including payments in respect of pro bono representation under section 194 of the LSA, or to payments made for bringing or defending any proceedings, but only if and to the extent that those monies are not damages. For the avoidance of doubt, this includes:</p> <ul style="list-style-type: none"> • costs between opposing parties including costs management and budgeting; • solicitor and client costs but not if and to the extent that issues of 			

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<p>negligence arise when a lawyer competent to deal with allegations of negligence ought to be instructed instead;</p> <ul style="list-style-type: none"> • legal aid, criminal costs, wasted costs or costs against third parties. <p>Further, you may administer any oath.</p> <p>The scope of this authorisation does not prevent you from offering other services as a Costs Lawyer provided you do so in accordance with this Code of Conduct and adhering to any of the CLSB’s other regulatory arrangements that are relevant.</p>			
<p>Seven principles of regulation</p> <p>There are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. Adherence to these principles is mandatory.</p> <p>You must:</p> <ol style="list-style-type: none"> 1. Act with honesty and integrity and maintain your independence professionalism. 			<p><i>The Code has historically adopted a slightly different configuration of the professional principles than those set out in the Legal Services Act 2007 (LSA), or those adopted by other authorised regulators (which are also variants of the LSA, section 1(3)). Section 1(3) defines the “professional principles” as follows:</i></p> <p><i>(a) that authorised persons should act with independence and integrity,</i></p> <p><i>(b) that authorised persons should maintain proper standards of work,</i></p> <p><i>(c) that authorised persons should act in the best interests of their clients,</i></p> <p><i>(d) that persons who exercise before any court a right of audience, or conduct litigation in relation</i></p>

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<p>2. Comply with your duty to the court and promote the good in the administration of justice.</p> <p>3. Act in the best interests of each the client.</p> <p>4. Provide a good quality of work and service to each client.</p> <p>5. Deal with the regulators and Legal Ombudsman in an open and co-operative way.</p> <p>6. Treat everyone fairly and with dignity and respect.</p> <p>7. Keep your work on behalf the affairs of your clients confidential.</p>	<p>2. Comply with your duty to the court and promote the proper in the administration of justice.</p> <p>6. Treat everyone fairly and equitably, and with dignity and respect.</p>	<p>The word “good” has been changed to “proper” in principle 2 following feedback that “good” is subjective and to align the Code with that of other regulators.</p> <p>The words “and equitably” have been added to principle 6 in line with feedback from the LSCP, and to reflect the fact that some clients (for example, vulnerable clients) may need different types of service to enable them to receive the same level of service and satisfaction as others.</p>	<p><i>to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and (e) that the affairs of clients should be kept confidential.</i></p> <p><i>The proposed amendments to the principles are designed to maintain the structure of the current Code, but with minor changes as follows:</i></p> <ul style="list-style-type: none"> • <i>Principle 1 is amended to include independence in place of professionalism. The latter concept is reflected already in principle 4 in particular. Independence is a core value that is not currently mentioned in the Code and which emerged from the RPF project findings as an attribute that clients particularly value.</i> • <i>Principle 2 strengthens the duty to the administration of justice beyond a duty to comply, toward encouraging the promotion of good administration of justice and, by implication, better allocation of resources, including those of the court.</i> • <i>Principle 3 is amended to reflect the fact that Costs Lawyers are often not acting directly for a client but through a professional client.</i> • <i>Principle 6 is amended to incorporate the concept of fairness as well as dignity and respect. This is a more accurate reflection of prevailing equality, diversity and inclusion (EDI) norms and equality legislation.</i> • <i>Principle 7 is broadened slightly to reflect the fact that Costs Lawyers will have access to</i>

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			<i>client information beyond simply the work that they are undertaking on the client’s behalf.</i>
PRINCIPLE 1: Act with honesty and integrity and maintain your independence professionalism			
<p>1.1 You must act honestly, professionally and with integrity, not only in all your dealings in your professional life but also in your private life where this might reasonably be considered to undermine your adherence to the core ethical principles of the profession.</p> <p>1.1a You must act independently in the interests of the good administration of justice. This duty overrides your duties to your client and applies both to your work before the court and in conducting litigation.</p> <p>1.2 You must not attempt to carry on a reserved legal activity</p>	<p>1.1 You must act honestly, professionally and with integrity, not only in all your dealings in your professional life but also in your private life where your behaviour might reasonably be considered to undermine your adherence to the core ethical principles of the profession.</p> <p>1.1a You must act independently in the interests of the proper administration of justice. This duty overrides your duties to your client and applies both to your work before the court, in advising clients, and in conducting litigation.</p>	<p>1.1 The word “this” has been replaced with “your behaviour” for clarity.</p> <p>1.1a. The word “good” has been changed to “proper” in principle 2 following feedback that “good” is subjective and to align the Code with that of other regulators. The words “in advising clients” have been added to make it clear that upholding the proper administration of justice applies when advising clients, as well as to a Costs Lawyer’s work before the court and in conducting litigation.</p>	<p>1.1. <i>Professionalism is deleted here as this is implicit in the other core values. The application of the principles is not defined in the current Code and the current drafting suggests these are narrowly focused on professional activities as a Costs Lawyer compared, for example, to the application of other legal regulators’ codes. See for example IPReg’s new Code that was approved by the LSB in February 2023, which provides: “These Principles set out the ethical behaviours that IPReg expects all regulated persons to uphold. This includes not only in their professional life but also their private life where it is relevant to their practice as a regulated person.”</i></p> <p>1.1a <i>Independence is not mentioned as a core value in the current Code, but the RPF project findings suggested that the most significant added value a Costs Lawyer could bring to the legal system was as an independent assessor of costs. It is expanded upon in the sections on the court and client’s best interests below. Learnings from recent disciplinary investigations also highlight the need to make explicit the interaction between independence / integrity and other ethical principles (such as keeping a client’s affairs confidential).</i></p>

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<p>other than those you are authorised to undertake under the LSA. Where you carry out unreserved legal activities within the same business, or if you hold yourself out as a Costs Lawyer in any other business, you must adhere to this Code of Conduct across these other activities.</p> <p>1.3 You must not give false or misleading information to anyone with whom you deal.</p> <p>1.4 When you supply or offer your services as a Costs Lawyer, you must not be misleading or inaccurate when you publicise yourself as a Costs Lawyer or your business. about the nature or scope of the services you are offering, who will be legally responsible for undertaking them, the extent to which they are covered by regulation and insurance, the terms on which they will be supplied or the basis on which they will be charged.</p> <p>1.5 You must not: (i) make an unsolicited approach by any</p>			<p><i>1.2 This proposed addition makes clear that the Code applies not just to the exercise of reserved activities. It also serves to remind Costs Lawyers that they can carry out other activities beyond core costs law services.</i></p> <p><i>1.4 This obligation brings Costs Lawyers into line with the obligations on barristers. It highlights the importance of all clients – including professional clients – understanding what services are provided within the scope of regulatory protections.</i></p>

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<p>means to a private individual (lay person) or to domestic premises (unless a business is being conducted from there) in order to publicise your service as a Costs Lawyer or your business; or (ii) accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.</p> <p>1.6 You must not enter into any fee arrangements which are unlawful.</p> <p>1.7 You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers.</p> <p>1.8 You must only use the CLSB’s regulatory marks in compliance with the terms of use published on the CLSB website.</p>			<p>1.8 This follows up on a recommendation from the RPF project to tighten up/clarify the use of this mark. Whilst the inclusion here does not represent any material change, it lays the foundations for tightening up in due course (for example, linking more explicitly to Costs Lawyers working in a particular way such as in law firms led by Costs Lawyers).</p>
<p>PRINCIPLE 2: Comply with your duty to the court in the and promote the good proper administration of justice</p>			
<p>2.1 You must at all times act within the law.</p> <p>2.2 You must not knowingly or recklessly either mislead the</p>			<p>2.2 This is an addition to align Costs Lawyer obligations to those of barristers.</p>

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<p>court, attempt to mislead the court or allow the court to be misled.</p> <p>2.3 You must comply with any court order which places an obligation on you and you must not be in contempt of court.</p> <p>2.4 You must ensure that clients understand when your duties to the court will override duties owed to them and you must advise clients to comply with court orders made against them.</p> <p>2.5 You must support the good administration of justice by promoting the appropriate and cost-effective use of the resources of the court.</p>	<p>2.5 You must support the proper administration of justice by promoting the appropriate and cost-effective use of the resources of the court and the parties.</p>	<p>2.5. The word “good” has been changed to “proper” in principle 2.5 following feedback that “good” is subjective and to align the Code with that of other regulators. The words “and the parties” have been added to make it clear that cost-effective use of resources is important for consumers and parties, as well as the courts, in line with feedback from the LSCP.</p>	<p>2.4 This is an addition designed to reinforce the role of Costs Lawyers as independent actors in the justice system.</p> <p>2.5 This is a proposed new obligation designed to underline the unique role that Costs Lawyers can play in the justice system to support the proper use of court resources.</p>
PRINCIPLE 3: Act in the best interests of each the client			
<p>3.1 You must always act in the client’s best interests. As a Costs Lawyer you may be instructed by another regulated person (“professional</p>	<p>3.1 You must always act in the client’s best interests. As a Costs Lawyer you may be instructed by another regulated person</p>	<p>3.1. The word “good” has been changed to “proper” in principle 3.1 following feedback that “good” is subjective and to align the Code with that of other regulators. The definitions of professional</p>	<p>3.1 This promotes the distinction between the Costs Lawyer’s professional client and ultimate client, which was a key recommendation from the RPF project. It also emphasises again the</p>

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<p>client”) to act for an underlying client (“ultimate client”). You must act at all times to ensure the in the best interests of each client, whether a professional client or an ultimate client, ‘s interest is paramount except where this conflicts with your duty to act independently in the interests of the good administration of justice duties to the court or where otherwise permitted by law.</p> <p>3.1a You must decline to act:</p> <ul style="list-style-type: none"> – if it would not be in the ultimate client’s best interests; or – if that client’s interests conflict directly with your own; or – if that client’s interests conflict with those of your professional client or another client. You may, however, act if each client has substantially common interests and has given informed consent. <p>3.2 You must provide for an effective complaints procedure for handling complaints from both professional and ultimate</p>	<p>(“professional client”) to act for an underlying client (“ultimate client”). You must act at all times to ensure the in the best interests of each client, whether a professional client or an ultimate client, ‘s interest is paramount except where this conflicts with your duty to act independently in the interests of the proper administration of justice duties to the court or where otherwise permitted by law.</p> <p>3.1b In the event of a conflict between the interests of your professional client and the interests of your ultimate client, the interests of the ultimate</p>	<p>and ultimate client have been augmented and moved to the definitions section.</p> <p>3.1b Principle 3.1b is new. It has been added to make it clear that, in the event of a conflict of interest between the professional and ultimate client, the</p>	<p><i>overriding nature of the duty of independence (see new 1.1a above).</i></p> <p><i>3.1a This proposed addition provides further nuance to the conflict assessment and brings it into line with the SRA’s Code of Conduct for Solicitors. Our guidance already reflects this nuance and highlights that the Code is too blunt an instrument as current drafted.</i></p> <p><i>3.2 This again reflects the distinction between professional and ultimate clients and emphasises</i></p>

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<p>clients, covering issues relating to your professional conduct as well as the service you provide, in line with the CLSB’s guidance on complaints procedures.</p> <p>(first tier complaints handling procedure) which is simple and transparent and ensures that a complaint can be made by any reasonable means and which takes into account the individual needs of clients (in particular the needs of vulnerable clients).</p> <p>3.3 You must ensure that complaints are dealt with promptly (within a maximum eight week period from the date of receipt) openly and fairly and that appropriate provisions for redress exist.</p> <p>3.4 You must ensure that advise new clients are advised in writing when instructions are first received of:</p> <p>(i) An estimate of fees / details of charging structure and where that estimate subsequently</p>	<p>client should be given precedence.</p>	<p>interests of the latter should take precedence.</p>	<p><i>the need for the ultimate client to have a direct route for complaining to the Costs Lawyer. It also mirrors recent amendments to our Disciplinary Rules and Procedures which ensure that both conduct and service complaints are considered at first tier. (Note that our guidance and audit processes make clear that individual / additional complaints procedures are not required by practitioners working exclusively in-house or for SRA regulated firms that have firm-wide procedures that comply with the SRA Code of Conduct for Firms.)</i></p> <p><i>3.4 This mirrors more closely the drafting in the SRA’s Codes of Conduct – it does not make each Costs Lawyer responsible for sending client care letters, not relevant to employees, but does require them to make sure arrangements are in place.</i></p>

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<p>becomes inaccurate or that charging structure changes provide an updated estimate / notice of revised charges.</p> <p>(ii) The right to complain.</p> <p>(iii) How to complain i.e. the first tier complaints handling procedure that applies to the services you will provide.</p> <p>(iv) The period within which you will deal with complaints under your first tier complaints handling procedure.</p> <p>(v) If applicable, the client’s right to refer their complaint to the Legal Ombudsman in certain circumstances. the event the matter is</p>			<p><i>3.4(iv), (vi) and (vii) are redundant as they are included in our extensive guidance on complaint handling. As drafted, they give the incorrect impression that this information is more important than the other information about complaints that must be provided to clients, as set out in detail in the guidance.</i></p> <p><i>The addition in 3.4(v) reflects the fact that right of access to the Legal Ombudsman is limited.</i></p>

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<p>not resolved to the satisfaction of the client or the matter has not been resolved within eight weeks of the complaint being made.</p> <p>(vi) Applicable time limits for referring the complaint to the Legal Ombudsman.</p> <p>(vii) The Legal Ombudsman's contact details.</p> <p>3.5 You must identify and rectify any systemic client complaint issues that are causing, or are likely to cause, client complaints, taking steps to do so promptly upon discovery.</p> <p>3.6 You must not accept client money save for disbursements, for which you are liable on behalf of your client, and payment of your proper professional fees. This does not prevent you from using the</p>			<p>3.5 This suggested addition is intended to encourage Costs Lawyers to take proactive action to rectify potential complaints issues.</p> <p>3.6 This addresses a recommendation from the RPF project findings. Costs Lawyers have sometimes been reluctant to act for individual consumer clients because of the risk of not getting paid. Taking fees on account through TPMA's or other independent financial structures is not inconsistent with the existing principle in 3.6. We took the opportunity in 2020 to emphasise this in our guidance, and we have the opportunity now to clarify this in the Code itself to help encourage uptake.</p>

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<p>services of third party financial institutions, such as escrow accounts or third party managed accounts, to deal with client money (including advance payment of your fees) so long as the terms of those services are agreed in advance with your client.</p> <p>3.7 You must provide required documentation and information on an application for a practising certificate and in the event of any complaint investigation conducted by CLSB or the Legal Ombudsman.</p> <p>3.8 You must ensure that you maintain professional indemnity insurance that which complies with the Practising Rules requirements of the CLSB prevailing at the time and promptly provide evidence of that insurance cover if requested by a client, CLSB, ACL or the Legal Ombudsman.</p>	<p>3.7 You must ensure that the information you provide to each client or prospective client is in a form that is tailored to their attributes, needs and circumstances.</p>	<p>Principle 3.7 is new (replacing the former principle 3.7). It has been added in response to consultation feedback that the revised Code should include a requirement that information provided to the clients and prospective clients is in a form that they are able to understand, based on the nature of the individual or business.</p>	<p>3.7 This provision is now covered in the later section on cooperating with your regulator, which is a more natural fit.</p> <p>3.8 The deletion of ACL brings the Code in line with the prevailing Internal Governance Rules.</p>
PRINCIPLE 4: Provide a good quality of work and service to each client			
<p>4.1 You must ensure that you only undertake work for which you</p>			<p>4.1 This addition references the need for ongoing competence and paves the way for our</p>

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<p>are properly qualified and which you are competent to undertake.</p> <p>4.2 Work must be undertaken with due skill, care and attention, with proper regard for the technical standard expected of you. If you do not have the knowledge, skills or experience to undertake the work you must decline it.</p> <p>4.3 You must ensure that you carry out your professional work in a timely manner with proper regard for standards of professional service and care.</p> <p>4.4 You must maintain your competence to carry out your role and keep your professional knowledge and skills up to date. You must keep your professional knowledge up to date by undertaking relevant training in accordance with current Practising Rules.</p> <p>4.5 You must keep the client regularly informed as to the progress of</p>	<p>4.5 You must keep each client regularly informed as to the progress of the work and keep accurate records of that work.</p>	<p>4.5 and 4.6. These principles have been amended so that they refer to “each client”. We consider that referring to “each” client in both of these principles</p>	<p><i>implementation of the LSB’s policy statement on ongoing competence.</i></p> <p><i>4.4 This amendment suggests broadening the obligation from simply the obligation to keep “knowledge” up to date, to encompass a wider “competence” obligation, in line with the inclusion of skills and attributes in the Competency Statement.</i></p>

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<p>the work and keep accurate records of that work.</p> <p>4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf throughout the lifetime of a matter, including how it will be priced, the costs incurred and the likely overall cost of the matter (including any potential liability for the costs of other parties)that work.</p>	<p>4.6 You must ensure each client is able to make informed decisions about the work being undertaken on their behalf throughout the lifetime of a matter, including how it will be priced, the costs incurred and the likely overall cost of the matter (including any potential liability for the costs of any other parties)that work.</p>	<p>makes clear that the obligations apply to both professional and ultimate clients. The word “any” has been added before “other parties” in principle 4.6 for clarity based on respondent feedback.</p>	<p><i>4.6 This expands on the current version of 4.6 to reflect the potential greater role for Costs Lawyers in pricing and costs, and the importance of clients understanding not only costs incurred for work done on their behalf but also their potential liability in relation to the whole matter.</i></p>
<p>PRINCIPLE 5: Deal with the regulators and the Legal Ombudsman in an open and co-operative way</p>			
<p>5.1 You must be open, honest and co-operate in your dealings with the CLSB, ACL, other regulators and the Legal Ombudsman</p> <p>5.1a You must provide accurate and complete documentation and information on an application for a practising certificate and you must promptly notify the CLSB of any subsequent event that impacts on your fitness to be a Costs Lawyer.</p>			<p><i>5.1 The deletion of ACL brings the Code in line with the prevailing Internal Governance Rules.</i></p> <p><i>5.1a This text has partially moved from principle 3.7 (acting in the client’s best interests). The additional text, requiring a Costs Lawyer to update the CLSB of further developments, reinforces the obligation in Practising Rule 4.1. It is intended to emphasise the need for notifications to be made at any time and reflects the same emphasis that the SRA puts on these issues.</i></p>

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<p>5.1b You must respond to any requests promptly and fully within 14 calendar days to any requests for information from the CLSB with full and accurate information. You must provide the CLSB with access to information and documentation if requested to do so.</p> <p>5.2 You must promptly notify the CLSB of any breach of its Code regulatory arrangements this Code by yourself or other Costs Lawyers and notify any other approved regulator, as appropriate, if you reasonably believe there has been a serious breach of their regulatory arrangements by any person regulated by them (including you).</p> <p>5.3 You must not take any action to dissuade or prevent anyone from reporting you to the CLSB or Legal Ombudsman, or victimise anyone who has done so.</p>			<p><i>5.1b This removes the arbitrary deadline of 14 calendar days.</i></p> <p><i>5.2 This proposes broadening the reporting requirement to take into account the role of Costs Lawyers in SRA regulated firms in particular and covers all regulatory arrangements, not just the Code. It brings the CLSB requirements into line with other approved regulators' codes and promotes cooperation between regulatory bodies in the interests of clients and the public.</i></p> <p><i>5.3 This brings the Code into line with other regulators' codes in relation to action to undermine cooperation.</i></p>

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<p>5.4 You must promptly comply with any request, notice or disciplinary outcome issued to you by the CLSB under its regulatory arrangements.</p>			<p>5.4 This new provision is intended to fill a gap in the current Code to ensure that Costs Lawyers act upon requests from the CLSB. Although this is implicit in existing principle 5.1 of the Code, new principle 5.4 matches obligations imposed by other legal regulators and underpins the effectiveness of the Disciplinary Rules and Procedures.</p>
<p>PRINCIPLE 6: Treat everyone fairly and equitably, and with dignity and respect</p>			
<p>6.1 You must treat all clients, staff or colleagues and third parties fairly and with dignity and respect. You must not bully or harass them, or unfairly should encourage equality of opportunity and must not unlawfully discriminate against them (either directly or indirectly) victimise or harass them on the grounds of age, disability, race (including colour, ethnic or national origin, nationality and citizenship), sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual orientation, religion or belief.</p> <p>6.2 You must not engage in or facilitate counter-inclusive conduct or harassment which,</p>	<p>6.1 You must treat all clients, staff or colleagues and third parties fairly and equitably, and with dignity and respect. You must not bully or harass them, or unfairly should encourage equality of opportunity and must not unlawfully discriminate against them (either directly or indirectly) victimise or harass them on the grounds of age, disability, race (including colour, ethnic or national origin, nationality and citizenship), sex, gender reassignment, pregnancy and maternity, marital status (including civil partnerships), sexual</p>	<p>Principle 6 and 6.1. The words “and equitably” have been added to principle 6 in line with feedback from the LSCP, and to reflect the fact that some clients (for example, vulnerable clients) may need different types of service to enable them to receive the same level of service and satisfaction as others.</p>	<p>6.1. This adds fairness into the discrimination principle and mirrors more closely the protected characteristics in the Equalities Act 2010. It aligns with new text at paragraph 1.5 of the SRA’s Code of Conduct for Solicitors, which refers to bullying and harassment without linking these to protected characteristics (noting that this may be relevant to Costs Lawyers working in firms regulated by the SRA).</p> <p>6.2 This incorporates the commitment of legal regulators in their joint statement “Tackling</p>

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<p>intentionally or unintentionally, narrows or denies opportunities to people because of their background or characteristics..</p> <p>6.3 If you are an employer, you must:</p> <ul style="list-style-type: none"> - have and adhere to a written policy which prevents discrimination and harassment and must investigate any allegation of discrimination, victimisation or harassment and take disciplinary action where appropriate- <p>6.3 You must</p> <ul style="list-style-type: none"> - make reasonable adjustments for those with a disability to ensure they are not at a disadvantage in comparison with those without disabilities. 	<p>orientation, religion or belief.</p>		<p><i>Counter-Inclusive Misconduct Through Disciplinary Processes” (May 2022).</i></p> <p>6.3 This makes a distinction between conduct that can reasonably be expected of a Costs Lawyer acting as an employer as compared to individual practitioners.</p>
<p>PRINCIPLE 7: Keep the affairs you work on behalf of your clients confidential</p>			
<p>7.1 You must keep the affairs of clients, including or former clients, confidential unless disclosure is required or allowed by law or if the client</p>			<p><i>7.1 This is a minor drafting change, adjusting the principle to bring it into line with the body of the Code.</i></p>

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<p>consents in writing to disclosure, having had the consequences of such consent explained to them. You must ensure that your client is able, in your reasonable opinion, to give informed consent to waiving their right to confidentiality.</p>			